

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7572 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDULAL KESHAVALAL SHAH

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 7572 of 1988

MR SK JHAVERI for Petitioners Nos. 1-1/5

MR ASHISH J.DESAI, AGP for Respondent No. 1

MR KM PATEL for MR VB PATEL for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/10/2004

ORAL JUDGEMENT

The petitioner, former employee and the Managing Director of the respondent No.2 - Gujarat Mineral Development Corporation Limited (hereinafter referred to as "the Corporation"), has challenged the action of the Corporation in terminating the service of the petitioner as General Manager in the year 1973; has claimed right to continuance in service till he reached the age of superannuation on 9th June, 1985 and the consequential terminal benefits. The petitioner has challenged the action of the Corporation in reducing his monthly wages from Rs.3,200=00 to Rs.3,000=00 as Managing Director of the Corporation. He has also challenged the action of the Corporation in not reimbursing the petitioner the expense incurred by the petitioner for medical treatment outside India.

Pursuant to the order dated 30th November, 1989 the petitioner has deleted prayer paragraph 23(A) of the petition i.e. the petitioner has forgone the challenge to the order of termination of his service as General Manager made on 9th February, 1973.

On 26th July, 1963 the petitioner was appointed as Secretary in the Corporation. In course of time he earned promotion as General Manager. On 9th February, 1973 his service as General Manager was terminated. On 21st February, 1978 the petitioner was appointed as Managing Director for a term of five years. At the time of his appointment, by Resolution dated 7th April, 1978 subject to the approval by the State Government, the petitioner's pay was fixed at Rs.2,500=00 in the scale of Rs.2,500-3,000. By Resolution dated 20th February, 1979, after receiving approval from the State Government, the terms and conditions of service of the petitioner were modified. The basic pay of the petitioner was fixed at Rs.3,200=00 in the scale of Rs.3,000-3,500 with effect from 24th February, 1978. The said term was further modified by Resolution dated 11th September, 1981 reducing the basic salary of the petitioner from Rs.3,200=00 to Rs.3,000=00. On expiry of the five years' tenure the petitioner was relieved from service as Managing Director on 23rd February, 1983.

As recorded hereinabove, the reliefs claimed in the present petition are manyfold. The first and foremost challenge is to the order dated 9th February, 1973 whereby the petitioner's service as General Manager came to be terminated. Consequently, the petitioner has prayed for the benefit of continuance in service till he reached the age of superannuation on 9th June, 1985 and the terminal benefits. The petitioner has also claimed

that on the date of termination of service on 9th February, 1973 as General Manager, 180 days' unutilised leave was available to him. The petitioner should be allowed to encash the said leave and be paid wages and allowances for the said 180 days. If the petitioner is allowed to avail of 180 days' leave, the petitioner's total service in the Corporation would be more than ten years. The petitioner should, therefore, be held to be entitled to terminal benefits considering ten years' service in the Corporation. The petitioner has also claimed that on 9th February, 1973 the petitioner was paid three months' wages (excluding the allowances) in lieu of notice. The petitioner has prayed that the petitioner was entitled to three months' notice or wages and allowances in lieu of such notice. The petitioner should, therefore, be paid the allowances due and admissible to the petitioner. He has also made grievance with respect to the payment of travelling allowance and daily allowance which, according to the petitioner, was not paid to the petitioner but was adjusted against the advances made to the petitioner. The petitioner has also made grievance with respect to the authority to use the Corporation's car free of charge.

Learned advocate Mr.Jhaveri has submitted that pursuant to the order dated 30th November, 1989 the petitioner did give-up his challenge to the order of termination of service dated 9th February, 1973 but he did not give-up the claim with respect to the consequential benefits. He has submitted that the service rule 27 enables the Corporation to terminate the service of an employee of the Corporation after giving three months' notice or three months' basic pay in lieu of such notice but, the Corporation is required to record reasons for the same. In the present case, the order dated 9th February, 1973 does not record reasons for termination of service of the petitioner. The said order is, therefore, void-ab-initio. The petitioner is, therefore, entitled to consequential benefits as prayed for by him. In support of the aforesaid claims made by the petitioner, Mr.Jhaveri has relied upon the judgments of the Hon'ble Supreme Court in the matters of Ramchandra Shankar Deodhar and others v/s. The State of Maharashtra and others [AIR 1974 SC 259]; of Haryana State Electricity Board v/s The State of Punjab & Haryana and others [AIR 1974 SC 1806]; of Samsher Singh v/s. State of Punjab and another [AIR 1974 SC 2192]; of The Madras Port Trust v/s. Hymanshu International by its Proprietor V.Venkatadri (dead) by L.Rs. [AIR 1979 SC 1144]; Surjit Singh v/s. State of Punjab and others [AIR 1996 SC 1388]; Uptron India Ltd. v/s. Shammi Bhan and another

[AIR 1998 SC 1681]; State of Punjab and others v/s. Ram Lubhaya Bagga etc., etc. [AIR 1998 SC 1703]; Grid Corporation of Orissa and others v/s. Rasananda Das [AIR 2003 SC 4599].

Learned advocate Mr. Patel has appeared for the Corporation and has contested the petition. He has submitted that the petition deserves to be dismissed on the ground of delay, laches and also on the principle of acquiescence. He has submitted that the challenge to the order dated 9th February, 1973 made in the present petition is grossly belated. Besides, the petitioner having given-up the said challenge, the claim for consequential benefits is not maintainable. The petitioner having accepted the tenure appointment in the year 1978, he has acquiesced in the above referred order dated 9th February, 1973. For the said reasons the petitioner cannot claim continuance in service till he attained the age of 60 years i.e. till 9th June, 1985.

As to the claim for reimbursement of medical expenses, Mr. Patel has submitted that the terms and conditions of service of the petitioner as stipulated by Resolution dated 20th February, 1979 permitted "free medical facilities for self and family" that necessarily mean the medical treatment taken in India. Such facility taken abroad was never contemplated. He has also submitted that even otherwise as to the medical facilities to the officers employed in the public sector undertakings of the State of Gujarat, the State Government had issued a general direction by Circular dated 28th January, 1980. The said Circular specifically clarified that the reimbursement of medical expenses for the treatment taken in a foreign country should ordinarily be not available. As an exception such public sector undertakings were permitted to reimburse medical expenses for treatment in a foreign country in case the treatment in question was not available in India and the employee had taken previous approval of the public sector undertaking. Mr. Patel has submitted that in the present case neither the petitioner had taken previous approval nor it was established that the treatment taken by the petitioner in the foreign country was, at the relevant time, not available in India. Mr. Patel has submitted that such treatment was available in India. The petitioner was taking treatment at one of the best hospitals i.e. at Jaslok Hospital at Mumbai. The Corporation had enquired of the said hospital. On the advise received from the said hospital, a sum of Rs.72,000=00, being the cost of the medical treatment had it been taken at the Jaslok Hospital, was sanctioned to

the petitioner. He has submitted that the claim for reimbursement of actual cost is not sustainable and requires to be rejected.

As to the payment or remittance of the amount of Provident Fund, Mr. Patel has submitted that the petitioner failed to complete the necessary formalities. The amount of Provident Fund, therefore, could not be remitted to the petitioner. Now that the petitioner has passed away pending this petition, if the heirs and legal representatives of the petitioner complete such formalities, the Corporation can facilitate remittance of the amount of Provident Fund standing to the credit of the petitioner. Mr. Patel has also fairly submitted that since the termination of the service of the petitioner on 9th February, 1973 there was a pay revision with effect from 1st January, 1973. In view of the said pay revision the petitioner was entitled a sum of Rs.6,507=00 being the amount of difference of gratuity. Such amount shall be paid to the petitioner as may be directed by this Court.

In the matter of Ramchandra Shankar Deodhar and others (supra), the Hon'ble Court has held that, "...the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts."

In the matter of Haryana State Electricity Board (supra), as to the laches the Hon'ble Court observed that, "...On the question of laches various representations and petitions which B.K.Puri had been making consistently were referred to by the High Court and it was considered that it was not a case where relief could be declined on the ground of laches or delay."

In the matter of Samsher Singh (supra), the order of termination of services of the appellant, a probationer, was held to be punitive in nature and, therefore, violative of Article 311(2) of the Constitution of India.

In the matter of The Madras Port Trust (supra), the Hon'ble Court refused to entertain the appeal preferred by the Madras Port Trust on the ground that the claim was barred by limitation. The Hon'ble Court observed that, "...The plea of limitation based on this

section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

In the matter of Surjit Singh (supra), the appellant, a Government servant, availed of the medical treatment in London and incurred considerable expenses. He claimed reimbursement at the rates prevalent at the Escorts. The reimbursement of medical expense was permitted to the extent the cost that the appellant would have incurred at All India Institute of Medical Sciences, New Delhi and not at the rates prevalent in the Escorts Heart and Institute and Research Centre, a private institution approved by the Government. The Hon'ble Court held that, "...When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions."

In the matter of Uptron India Ltd. (supra), the Hon'ble Court has held that, "...Conferment of 'permanent' status on an employee guarantees security of tenure. It is now well settled that the services of a permanent employee, whether employed by the Government, or Government company or Government instrumentality or Statutory Corporation or any other "Authority" within the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the Certified Standing Orders."

In the matter of State of Punjab and others (supra), the Hon'ble Court has upheld the revised policy of the State Government as regards the reimbursement of medical expenses at the rates prevalent at All India Institute of Medical Sciences.

In the matter of Grid Corporation of Orissa and others (supra), the Hon'ble Court deprecated and quashed the policy allowing discrepancies in the service conditions amongst the employees who had been employed in Hirakund Dam Project prior to 1st April, 1960 and after

1st April, 1960, the date the State Government took over the said project.

Learned advocate Mr. Patel has relied upon the judgment of the Hon'ble Supreme Court in the matter of E. Hill & Co. Ltd. v/s. State of U.P. & Ors. [2002 III CLR 133]. In the said matter the challenge to the order of transfer was rejected. The Hon'ble Court held that, "...Having accepted the aforesaid amounts, it is quite obvious that the conduct of Gufran Ali showed that even though he had challenged his transfer to Bisunderpur unit of the company he accepted his termination of services by the company on accepting all amounts which were payable to him in accordance with law on account of closure of the unit where he was working. In view of this subsequent development, the earlier challenge of Gufran Ali's transfer from Khamariah to Bisunderpur, in fact, became infructuous because by his conduct he accepted the transfer when the terminal benefits which were paid to him on the closure of the unit at Bisunderpur were accepted by him."

The petitioner's challenge to the order of 9th February, 1973 was grossly belated. By his accepting the tenure appointment as Managing Director in the year 1978 also the petitioner should be held to have acquiesced in the said order dated 9th February, 1973. In any view of the matter, as recorded hereinabove, the petitioner had forgone the challenge to the aforesaid order dated 9th February, 1973. In my view, the claim for consequential benefits i.e. payment of allowances for the notice period, privilege leave, continuance in service, terminal benefits, etc. shall not be maintainable. Such reliefs cannot be granted unless the said order dated 9th February, 1973 is held to be bad and illegal and inoperative. The claim for the aforesaid consequential benefits is, therefore, rejected.

This leaves consideration of the claims for arrears of wages and allowances for the period from the year 1981 to 1983; claim for reimbursement of the medical expenses; claim for free use of Corporation's car for 500 kilometers every month or payment of Rs.400=00 in the alternative.

As to the claim for reimbursement of medical expenses, it was the case of the petitioner that the petitioner was suffering from cardiac ailment and was taking treatment at Jaslok Hospital at Mumbai. He was diagnosed of artery blockage and was advised to take treatment at St. Luke's Episcopal Hospital, Houston,

Texas, U.S.A. It is submitted that such treatment of coronary bypass surgery was then not available in India. The petitioner had, therefore, taken treatment at U.S.A. and spent a sizeable amount of Rs.2,01,914=00. Of the said amount, the Corporation had sanctioned a sum of Rs.72,000=00. The petitioner had, therefore, claimed reimbursement of the remainder of the said amount. The terms and conditions of the appointment of the petitioner allowed free medical facility for self and for the family. However, the same did not reflect that such facility may be availed of in a foreign country. Besides, as stated in the counter affidavit, the said condition never contemplated medical treatment in a foreign country. In any view of the matter, the Corporation being a public sector undertaking of the State of Gujarat, the service conditions of the petitioner would be governed by the rules and regulations or policy framed by the State Government from time to time. As reflected in the Circular dated 28th January, 1980 the reimbursement of the medical expenses incurred in a foreign country would be admissible only in exceptional cases. In the present case, except the bare statement made by the petitioner there is nothing on the record to suggest that at the relevant time coronary bypass surgery was not performed in India. On the contrary, it is a matter of common knowledge that such treatment is available in India for a long time. The fact that the petitioner was permitted to take treatment abroad or that he was permitted foreign exchange would not mean that the Corporation had agreed to reimburse the medical expenses incurred in the foreign country. I am, therefore, unable to hold that the petitioner was entitled to reimbursement of medical expenses incurred for medical treatment in foreign country beyond what was sanctioned by the Corporation.

As to the free use of Corporation's car, no specific details have been placed on the records of the matter. In absence of such specific details, the claim made five years after the expiry of the tenure of appointment cannot be entertained.

This brings me to the last challenge as to the reduction in pay of the petitioner. By Resolution dated 13th April, 1978 the basic salary of the petitioner was fixed at Rs.2,500=00 in the scale of Rs.2,500-3,000 subject to the approval of the State Government. After receiving the approval from the State Government, by Resolution dated 20th February, 1979, the petitioner's salary was improved to Rs.3,200=00 in the scale of Rs.3,000-3,500 from the date of his appointment.

However, on further intimation received from the State Government, by Resolution dated 11th September, 1981, the basic salary of the petitioner was reduced to Rs.3,000=00. Except that the said action was taken pursuant to the intimation received from the State Government, no justification for reduction in salary has come-forth from the Corporation. In absence of any cogent reasons for reduction in salary, the said action of the Corporation cannot be sustained. Irrespective of the delay in challenge to the said action, I am of the view that the petitioner was, as agreed by the Corporation, entitled to the monthly salary of Rs.3,200=00. The said salary could not have been unilaterally reduced at the instance of the State Government. In my view, therefore, the petition should partly succeed. It is declared that the petitioner was entitled to receive monthly basic pay of Rs.3,200=00 in the scale of Rs.3,000-3,500 and admissible allowances from 11th September, 1981 till 23rd February, 1983. The petitioner shall also be entitled to amount of difference in gratuity on account of revision of pay from 1st January, 1973 as admitted by the Corporation.

As the petitioner has passed away pending this petition, his heirs and legal representatives, four sons and the widow have been substituted as the petitioners. Learned advocate Mr.Jhaveri has submitted that the four sons of the petitioner have agreed that the amounts payable to the deceased petitioner be paid to his widow the petitioner No.1/5.

In view of the above discussion the petition is partly allowed. The respondent - Gujarat Mineral Development Corporation Limited shall pay a sum of Rs.6,507=00 being the amount of difference in gratuity to the petitioner No.1/5 Smt.Anandiben Chandulal Shah. The Corporation shall also calculate the salary (pay and allowance) due and payable to the deceased petitioner from 11th September, 1981 to 23rd February, 1983 on the basic pay of Rs.3,200=00 and increments, if any. The amount of difference in salary payable to the deceased petitioner be paid to the petitioner No.1/5 Smt.Anandiben Chandulal Shah. The Corporation shall also facilitate the aforesaid Smt.Anandiben Chandulal Shah in completing the necessary formalities for remittance of the amount of Provident Fund. The amount of Provident Fund outstanding to the credit of the deceased petitioner and the interest accrued thereon shall be remitted to the aforesaid Smt.Anandiben Chandulal Shah. The aforesaid amounts shall be paid as directed, within six weeks from today.

Rule is made absolute to the above extent. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

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